

April 9, 2002

Douglas A. Campbell  
Supervisor, Operating Permit Section  
Air Quality Bureau  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, IA 50322

Re: Title V Permit Appeals and Permit Modifications

Dear Mr. Campbell:

The purpose of this correspondence is to reply to your two recent letters of March 22 and March 25, 2002, in which you inquired about Title V permit appeals and permit modifications. In your March 22 letter you stated that two Iowa sources whose Title V permits are currently being appealed, have expressed the belief, contrary to that held by IDNR, that the effective date of these permits will be the date on which the appeal is decided, rather than the date on which the permit was signed and issued by IDNR.

During the resolution of a permit appeal, unless part or all of the permit is formally stayed, the entire permit remains in effect. If the appealed portion of the permit is stayed, the remaining permit conditions remain in effect. The applicable federal regulations at 40 CFR 70.6(a)(5) and the state regulations at IAR 567.22.108(8) require that all Title V permits include a "severability" clause to ensure the "continued validity of the various permit requirements in the event of a challenge to any portions of the permit." Our position is the same as yours, *i.e.*, the effective date of the permit should be the date on which it is issued, not the date on which any appeal was resolved.

With respect to the question raised in your March 25, 2002 letter, pertaining to permit modifications, the minor Title V permit modification procedures may be used to incorporate a "synthetic minor" construction permit into a Title V permit, if the change meets the criteria for a minor permit modification (*e.g.*, does not change applicable requirements of the Title V permit). This is true whether or not the construction permit was made available for public comment, although we recommend that IDNR public notice construction permits. In some circumstances "synthetic minor" construction permits may qualify as "off-permit" changes that would not

require any Title V permit modification. Although “synthetic minor” construction permits do not require a significant Title V permit modification there may be circumstances where a source makes a “Title I” modification and obtains a “synthetic minor” construction permit. For example, a source might obtain a “synthetic minor” permit for a physical change that is also a modification triggering a New Source Performance Standard.

We hope this information is useful to you and adequately responds to your questions. If you have any further questions, please do not hesitate to call Harriett Jones, of my staff, at (913) 551-7730.

Sincerely,

Donald Toensing  
Chief  
Air Permitting and Compliance Branch  
Air, RCRA and Toxics Division